TR 95/D16 - Income tax: employees carrying out itinerant work - allowances, reimbursements and deductions for transport and travel expenses

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Draft Taxation Ruling
Income tax: employees carrying out itinerant work - allowances, reimbursements and deductions for transport and travel expenses

other Rulings on this topic

IT 112; IT 543; IT 2027; IT 2273; TR 92/15; TD 93/113; TD 94/17

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DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to employees who carry out itinerant work ('itinerant employee').

2. This Ruling discusses the tax treatment of transport expenses which are claimed under subsection 51(1) of the *Income Tax Assessment Act 1936* ('the Act'). Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel.

3. This Ruling discusses the tax treatment of travel expenses which are claimed under subsection 51(1) of the Act. Travel expenses include the costs of accommodation, fares, meals and incidentals.

4. This Ruling discusses the assessability of allowances and reimbursements received under subsection 25(1), paragraphs 26(e) and 26(eaa) of the Act.

5. The substantiation provisions are not discussed in depth in this Ruling.

Date of effect

6. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to

the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Ruling

When is an employee's work itinerant?

7. There have been a number of cases considered by the Courts, Boards of Review and Administrative Appeals Tribunal where deductions for transport expenses were allowed on the basis of the taxpayer's 'shifting places of work'. 'Shifting places of work' is another term for itinerancy. In these cases the obligation to incur the travel expense arose from the nature of the taxpayer's work, such that they were considered to be travelling in the performance of their duties from the moment of leaving home. The following characteristics have emerged from these cases as being indicators of itinerancy:

a) travel is a fundamental part of the employee's work (paragraphs 23 to 28);

b) the existence of a 'web of work places' in the employee's regular employment, that is, the employee has no fixed place of work (paragraphs 29 to 33);

c) the employee continually travels from one work site to another (paragraphs 34 to 41);

d) other factors that may indicate itinerancy (to a lesser degree) include:

(i) the employee has a degree of uncertainty of location in his or her employment, (that is, no long term plan and no regular pattern exists) (paragraphs 43 to 49);

(ii) the employee's home constitutes a base of operation (paragraphs 50 to 57);

(iii) the employee has to carry bulky equipment from home to different work sites (paragraphs 58 to 66);

(iv) the employer provides an allowance in recognition of the employee's need to continually travel between different work sites (paragraphs 67 to 70).

8. Whilst the above characteristics are not exhaustive, they provide guidelines for determining whether an employee's work is itinerant. It is considered that no single factor on its own is necessarily decisive.

Allowances and reimbursements

9. The receipt of an allowance does not automatically entitle an employee to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 12 to 14).

Allowances

10. Allowances fall into the following categories:

(a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances;

(b) fully assessable to the employee with no deduction allowable even though an allowance is received;

(c) fully assessable to the employee with a deduction allowable for expenses incurred subject to special substantiation rules (see paragraph 11 and ***Award transport (fares) allowances*** paragraphs 71 to 75);

(d) not assessable to the employee because the employer may be subject to Fringe Benefits Tax. A deduction is not allowable to the employee for expenses incurred against such an allowance.

Reasonable allowances

11. The Commissioner of Taxation publishes annually a Taxation Ruling that indicates amounts considered reasonable in relation to the following expenses:

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

Allowances received in relation to these expenses are fully assessable. If an allowance is received and the amount of the claim for expenses **incurred** is no more than the reasonable amount, substantiation is not required. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

Reimbursements

12. If an employee receives a payment from his or her employer for **actual** expenses incurred, the payment is a reimbursement. In this instance the employer may be subject to Fringe Benefits Tax.

Generally, if an employee receives a reimbursement, the amount is not required to be included in his or her assessable income and a deduction is not allowable (see Taxation Ruling TR 92/15).

13. However, if motor vehicle expenses are reimbursed by the employer on a cents per kilometre basis, the amount is included as assessable income of the employee under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to actual motor vehicle expenses incurred.

14. If a payment is received from an employer for an **estimated** expense, the amount received by the employee is considered to be an allowance (not a reimbursement) and is fully assessable to the employee (see ***Allowances***, paragraph 10).

Allowable expenses

Transport expenses: travel between home and work

15. A deduction is allowable for the cost of travelling between home and work if an employee's work is itinerant. However, a deduction is generally not allowable for the cost of transport between home and the normal work place (paragraphs 76 to 83).

Travel expenses (accommodation, fares, meals and incidentals)

16. A deduction is generally allowable for the cost of travel expenses incurred by an itinerant employee when travelling for work purposes. Special substantiation rules apply (paragraphs 84 to 88).

Explanations

When is an employee's work itinerant?

17. The Act does not provide a definition of the word 'itinerant'. In the absence of a statutory definition, we must look to the ordinary usage of the word. The *Macquarie Dictionary* defines 'itinerant' as 'travelling from place to place' or 'one who travels from place to place especially for duty or business.'

18. In *FC of T v. Genys* (1987) 17 FCR 495; 87 ATC 4875; (1987) 19 ATR 356, (*Genys*' case) the taxpayer, a registered nurse, used an employment agency to seek relief work with various hospitals. She was not continuously employed by any one hospital. When a hospital was in need of additional staff they contacted the agency which would then contact the taxpayer. Northrop J (FCR at 498; ATC at 4879; ATR at 359) described itinerant as 'shifting places of work':

> '...where the taxpayer travels between home and shifting places of work, that is, an itinerant occupation.'

19. The question of whether an employee's work is itinerant is one of fact, to be determined according to individual circumstances. It is the nature of each individual's duties and not their occupation or industry that determines if they are an itinerant employee. Further, itinerant work may be a permanent or temporary feature of an employee's duties.

20. **Example:** Mary is employed as a plumber's labourer and is dispatched to several sites each day. As her duties require her to travel between sites on a regular basis, travel is an inherent part of her employment. Mary is regarded as an itinerant employee.

21. **Example:** Joe is also employed as a plumber's labourer, but normally works at a single site. Joe is temporarily assigned other duties for three months that require him to travel between several sites on a daily basis. As travel is not an inherent feature of Joe's regular duties he is not an itinerant employee. However, he would be considered itinerant for the three months he undertakes the temporary assignment.

22. The existence of the following characteristics would not necessarily be determinative, but would be a strong indication of itinerancy.

Travel is a fundamental part of the employee's work

23. Travel must be an essential feature of an employee's duties in order for that work to be classified as itinerant. In *Taylor v. Provan* [1975] AC 194 Lord Simon (discussing the rule established in *Ricketts v. Colquhoun* [1926] AC 1) said at 221:

> 'the obligation to incur the expenses of travelling in question must arise out of the nature of the office or employment itself, and not out of the circumstances of the particular person appointed to the office or employed under contract of employment - two different classes of travelling expenses readily come to mind. The first is where the office or employment is of itself inherently an itinerant one...In such cases the taxpayer may well be travelling in the performance of the duties of the office or employment from the moment of his leaving home to the moment of his return there - a visit to any head office might well be purely incidental or fortuitous.'

24. In *FC of T v. Wiener* 78 ATC 4006; (1978) 8 ATR 335 (*Wiener's* case) a teacher was required to teach at a minimum of four different schools (web of work places) during the week, and comply

with a strict timetable that kept her on the move throughout each of these days. The Court concluded that travel was inherent in her employment because the nature of the job itself made travel in the performance of her duties essential, and said (ATC at 4010; ATR at 339):

> 'that travel was a fundamental part of the taxpayer's work, is not open to challenge. Viewed objectively, it does not seem to me to be open to question that the taxpayer would not have been able to perform her duties without the use of her motor vehicle...it was a necessary element of the employment that on those working days transport be available at whichever school the taxpayer commenced her teaching duties and that transport remained at her disposal throughout each of those days.'

25. In *Genys*' case (FCR at 502-503; ATC at 4882; ATR at 362), Northrop J quotes Brightman J's statement of this principle in *Horton v. Young* [1972] 1 Ch 157 at 164:

> '...where a person has no fixed place or places at which he carries on his trade or profession but moves continually from one place to another, at each of which he consecutively exercises his trade or profession on a purely temporary basis and then departs, his trade or profession being in that sense of an itinerant nature, the travelling expenses of that person between his home and the places where from time to time he happens to be exercising his trade or profession will normally be, and are in the case before me, wholly and exclusively laid out or expended for the purposes of that trade or profession. I have used the adverb 'normally' because every case must to some extent depend on its own facts.'

26. The very nature of an employee's work must make it necessary to carry out the duties in several places. It is not sufficient for an employee to choose to perform his or her duties in an alternative location for convenience (e.g., a home office). In *Taylor v. Provan*, Lord Wilberforce said at 215:

> 'It is only if the job requires a man to travel that his expenses of that travel can be deducted, i.e., if he is travelling on his work, as distinct from travelling to his work...But for this doctrine to apply, he must be required by the nature of the job itself to do the work of the job in two places; the mere fact that he may choose to do part of it in a place separate from that where the job is objectively located is not enough.'

27. **Example:** Concetta has supervisory responsibilities for a chain of fashion stores. Her duties require her to travel daily to several stores to assess each store's performance and to attend head office

weekly to file reports. Travel is a fundamental part of Concetta's employment because the nature of the job itself makes travelling a necessary element of her duties.

28. **Example:** Eleni is an agency nurse who travels to several hospitals to relieve staff shortages. She is employed by the hospital for whom she performs the duties. Eleni remains at the one hospital until completion of her shift. Travel is not a fundamental part of Eleni's employment, as she is not required to travel in the performance of her work once she commences duty. She is not considered to be an itinerant employee.

Web of work places - employee has no fixed place of work

29. An employee may earn income by performing his or her duties at several work sites. The location of those sites may make it necessary to travel to the various sites. If an employee performs work at a single site and then moves to other sites on a regular basis, it would be considered that a web of work places exists. In *Wiener's* case, the taxpayer was required to attend four to five schools each day. This constituted a web of work places.

30. **Example:** Elio sells equipment and supplies for a pharmaceutical company. He is required to travel to many clients to obtain sales of his company's products. Elio attends the employer's office monthly to complete paperwork. Elio's work structure displays a web of work places as he performs his duties at many different locations and he would not be regarded as an itinerant employee.

31. Although an employee may perform duties at more than one work location, it may be insufficient to constitute a web of work places. Each work place may be regarded as a regular or fixed place of employment.

32. In *Case U29* 87 ATC 229; *Case 32* (1987) 18 ATR 3181 (*Case U29*), a carpenter was held not to be an itinerant employee. Senior Member Roach said at (ATC at 233; ATR at 3185):

> 'It was argued for this applicant that he too should be categorised as an itinerant worker even though for periods of several months in succession he had as a matter of routine but one place of employment for four days of the week and a second place of employment on a fifth day; and that at intervals of several months, there would be a change in the principal place of duty. Without more I am not satisfied that the applicant should be categorised as an itinerant worker...'

33. **Example:** Leo works for an accountancy firm and attends head office three days a week. He works the remaining two days at a

suburban office because it is closer to his home. Leo's work does not display a web of work places because:

(a) upon commencement he is not required to travel in the course of his duties; and

(b) Leo has two regular places of work.

Continual travel from one work site to another

34. In certain work situations continual unsettled travel from one work place to another is a common factor. In some instances, an employee's ongoing engagement may require him or her to attend various sites in different localities nominated by the employer. In most such cases the need to travel from place to place would be a necessary condition of employment.

35. In *Case T106* 86 ATC 1192; *Case 17* (1987) 18 ATR 3093 (*Case T106*), a taxpayer employed as an 'off-sider' in the building industry was continuously dispatched to sites at various locations. On any one day it was not unusual for the applicant to attend two sites and he often attended different sites on successive days. The Tribunal agreed that the taxpayer's employment was of an itinerant nature.

36. Continual travel refers to the frequency with which an employee moves from one work site to another. The frequency of travel between work sites is an important element. If an employee works at a particular site for an extended period of time before moving to a new work site, each place of work would be regarded as a regular or fixed place of employment. An employee may also have more than one regular or fixed place of employment at the same time. If the teacher in *Wiener's case* had attended only one school each day, each school would be regarded as a regular place of employment.

37. In *Case U97* 87 ATC 584; *Case 68* (1987) 18 ATR 3491 (*Case U97*), the taxpayer was employed as a fireman. He was attached to a fire station located close to his home in a northern suburb of Sydney, but for some years worked as a relief fireman. In that capacity, he was commonly sent to other fire stations in the Sydney fire district. The only distinguishing feature of his claim was that he travelled to one outer station regularly for a number of days then another outer station for another period.

38. The Tribunal stated that although he was not required to serve at the same station for every day during the course of the year, his employment was not itinerant. Senior Member McMahon contrasted the travel associated with the teacher in *Wiener's* case with that of the fireman and stated (ATC at 587-588; ATR at 3494):

> 'this was regarded by the Court as an essential feature of her employment. Had she not been required to attend at more than one school on any one day, it would seem that the Court may well have taken a different view of the expenses claimed. The position of the taxpayer in that situation where "the office or employment is of itself inherently an itinerant one and that the taxpayer may be said to be travelling in the performance of her duties from the moment of leaving home to the moment of return there" may be contrasted with the position of the applicant in the present case. Once having arrived at his outer station, he remained there until the end of his shift before returning home...There was no evidence that his duties required him to use his car from an outer station as a base during the course of his shift. The nature of his employment while there certainly could not be said to be itinerant.'

39. Further, in *Genys*' case, the Court in determining that the taxpayer was not required to travel in the course of her duties said (FCR at 503-504; ATC at 4882; ATR at 364):

> 'The main distinction, which I draw, between this case and the factual situations referred in *Horton v. Young* and *Wiener* is that here, the taxpayer does not travel between two places of work after the commencement of her duties; she simply drives from home to work and back again. By contrast, in the situations referred to in *Horton v. Young*, the taxpayer...travels from home to work, but also travels from that first place of work to *other* places of employment throughout the course of the day before his return home...the mere fact that the taxpayer in this case does not have a regular place of employment in the sense of a permanent employment at one hospital, is not sufficient to take her outside the general principles expressed in *Lunney*.'

40. **Example:** Susan works as a repairer for a manufacturer of office equipment. She is advised by mobile phone throughout the day of further clients to visit, and attends the employer's office weekly to complete paperwork and re-stock spare parts. Susan's work involves continuous travel from one location to another and her work is itinerant.

41. **Example:** Jack works in the interior decoration department of a large store. Occasionally, he is required to attend a client's home to provide a quotation. Jack's work does not involve continual travel between locations and his work is not itinerant.

Other factors

42. A deduction is allowable for the cost of transport between home and work if an employee's home is a base of operations or they are required to carry bulky equipment. While this applies irrespective of itinerancy, the following factors are often present in itinerant employment:

(i) the employee has a degree of uncertainty of location in his or her employment, (that is, no long term plan and no regular pattern exists) (paragraphs 43 to 49);

(ii) the employee's home constitutes a base of operation (paragraphs 50 to 57);

(iii) the employee has to carry bulky equipment from home to different work sites (paragraphs 58 to 66);

(iv) the employer provides an allowance in recognition of the employee's need to continually travel between different work sites (paragraphs 67 to 70).

These factors, on their own, do not establish itinerancy. However, they may support the classification of an itinerant employee.

Uncertainty of location

43. The element of uncertainty of location is generally another distinct characteristic of an itinerant worker. Unlike an ordinary worker who makes the daily journey to his or her regular place of work, the itinerant worker often cannot be certain of the location of their work sites.

44. The concept of uncertainty was highlighted in *Case T106* where the taxpayer was often uncertain about the work site he would be required to attend until the actual day of work. Senior Member Roach said (ATC at 1194; ATR at 3095):

> 'He does not work according to any regular pattern as to work site; there is no long-term plan by which he can predict what will be required of him in the future; and there is no certainty as to the range of work sites he may be called on to attend over a period. In my view his occupation is that of an itinerant worker.'

45. This can be contrasted with a worker who has a fixed place of employment and is aware of the location of the work place.

46. The fireman's duties in *Case U97* did not demonstrate the characteristic of uncertainty, although he was not required to serve at the same station for every day during the year. He was generally aware of his commitments well in advance.

47. Uncertainty of location is a feature that is generally found in itinerant work. However, instances may arise where an employee's work may be itinerant although the degree of uncertainty is minimal or non-existent.

48. In *Wiener's* case there was no uncertainty of location as the taxpayer was aware of the locations and times to attend each school in advance. However, the taxpayer was successful in being characterised as an itinerant worker by establishing other fundamental elements relevant to her case, including:

(a) travel was a fundamental part of her work;

(b) there was a web of workplaces in her employment structure and continual movement from one work site to another (she attended at least four schools each day); and

(c) her employer paid an allowance in recognition of the need to travel in the course of her duties.

49. **Example:** Ian is a shearer who has agreements with various property owners and therefore travels to the same farms each year. Although there is no uncertainty in Ian's employment pattern, his work is considered itinerant. This is because:

(a) travel is a fundamental part of his work;

(b) his work structure displays a web of workplaces;

(c) he continually moves from one place of work to another; and

(d) he is required to transport bulky equipment to each place of employment.

Home as a base of operations

50. An employee's home may constitute a base of operations if some part of the work is done at home, or the work is commenced at or before the time of leaving home to travel to work. Whether an employee's home constitutes a base of operations depends on the nature and the extent of the activities undertaken by the employee at home.

51. In *FC of T v. Collings* 76 ATC 4254; (1976) 6 ATR 476 the taxpayer was a highly trained computer consultant whose employment required her to be on call 24 hours a day. She was involved in supervising a major conversion of the computer facilities that her employer provided to its clients.

52. The taxpayer was provided with a portable terminal that was connected to the computer through the telephone line. It was common

for her to receive telephone calls at home and give advice to workers at the office any time a problem arose. If she was unable to resolve the problem over the telephone or through the portable computer she would return to the office in order to get the computer working.

53. The Court accepted that there were two separate and distinguishable facets of her employment. While she commuted regularly to her work, she was also required to be ready on call at all other times. The Court held that, on the occasions the taxpayer returned to work after hours:

(a) she had commenced performance of her duties before leaving home and travelled to work to complete those duties. Her obligation was more than just being on stand-by duty at home; and

(b) she did not choose to do part of the work in two separate places. The two places of work were a necessary obligation arising from the nature of the special duties of her employment.

54. The Court said (ATC at 4262; ATR at 484):

> 'I am not concerned with those normal daily journeys that have their sole relation to a person's choice of his place of residence; I am concerned with journeys which begin as a result of performance of the duties of the employment at the taxpayer's home. The journey from home to the office is undertaken, not to commence duty, but to complete an aspect of the employment already under way before the journey commences.'

55. In *Case S29* 85 ATC 276; 28 CTBR (NS) 269 *Case 34* the taxpayers were shearers who used their residence as a place where they sharpened, cleaned and maintained their equipment as well as seeking engagements by the use of their telephone. On occasion, each would ring around to get a team of shearers or shed hands together. Although they were not employees, the same tests for itinerancy applied, and the Board of Review held that the taxpayer's home constituted their base of operations (see Taxation Ruling IT 2273).

56. The mere receipt of telephone calls from an employment agency or an employer is not sufficient to allow the home to be classed as a base of operations.

57. In *Genys*' case the taxpayer was contacted by the nursing agency when work was available. The taxpayer argued that her work instructions were received from the agency over her home telephone - the only method of contacting the taxpayer and thus the home constituted a work base. The Court held that the taxpayers' duties did not commence at the time of receipt of the phone calls but upon arrival

at the relevant hospital. Northrop J said (FCR at 501; ATC at 4881; ATR at 362):

> 'I am of the opinion that the mere receipt of telephone calls from the agency requesting the respondent to work a particular shift is not sufficient to constitute the respondent's home a place of work...Nor does the respondent commence her duties upon receipt of the call...the taxpayer's duties did not commence until her arrival at the hospital.'

Requirement to carry bulky equipment

58. A deduction is allowable if the transport costs can be attributed to the transportation of bulky equipment rather than to private travel between home and work. If the equipment is transported to and from work by the employee as a matter of convenience or personal choice, it is considered that the transport costs are private and no deduction is allowable.

59. A deduction is not allowable if a secure area for the storage of equipment is provided at the work place. (See *Case 59/94* 94 ATC 501; *AAT Case 9808* (1994) 29 ATR 1232).

60. In *FC of T v. Vogt* 75 ATC 4073; (1975) 5 ATR 274 the taxpayer was a musician who maintained instruments and related equipment at home for storage and practice. He would generally transport all his instruments to each place of performance, including an acoustic bass and electric bass (each with their own amplifying equipment), trumpet and flugel horn. The Court held that (ATC at 4078; ATR at 279):

> '...in a practical sense, the expenditure should be attributed to the carriage of the taxpayer's instruments rather than to his travel to the places of performance. The mode of his travel was simply a consequence of the means which he employed to get his instruments to the place of performance, that is by carrying them in the motor vehicle which he drove.'

61. The extreme bulk of the equipment was a decisive factor in this case. Waddell J considered the analogy of a violinist who kept his violin at home for safe-keeping and practice, and stated (ATC at 4078; ATR at 280) that the cost of travelling from his home to the place of performance:

> 'would not be deductible...could not be said to arise from, nor could it be attributed to, the necessity of getting the violin to the place of performance.'

62. In *Case 43/94* 94 ATC 387; AAT *Case 9654* (1994) 29 ATR 1031 the taxpayer was a flight sergeant with the Royal Australian Air

Force. He was supplied with a locker in which to store various items of uniform clothing and flying equipment. By personal choice, he kept only a full dress uniform in the locker, preferring to keep the equipment in the boot of his car in which he travelled to and from work. The equipment was carried in a duffle bag which, when packed, weighed 20kg. He usually took home a navigational bag containing charts, work manuals and study materials and on occasions, he carried another bag which weighed 10kg when packed.

63. The Tribunal found that (ATC at 390; ATR at 1034-1035):

- '...all of the items...when removed from the bag, were capable of satisfactory storage in the locker;
- the decision to keep the equipment in the boot of the car was driven by personal choice...;
- the duffle bag with its contents was not of a size or weight to impede facile transportation.'

The Tribunal decided that the cost of the taxpayer's travel to and from work was not incurred in earning his assessable income.

64. This characteristic is a reflection of the practical necessity for the employee's tools of trade to be readily available at each work site. For example, in *Case T106* the taxpayer was required to transport shovels, a brick-rake and other minor tools and equipment to each site. The teacher in *Wiener's* case transported paperwork, texts, film cassettes, tape recorders and sometimes a film projector to the various schools attended.

65. **Example:** Enrico is a bricklayer who is employed at a building site for six months. He carries a cement mixer, a ladder, shovels, trowels and other equipment to and from the site each day. A secure storage area is not provided at the work site. Enrico is not an itinerant employee. However, a deduction is allowable for the cost of travelling between home and work due to the carriage of bulky equipment.

66. **Example:** Suzette is employed as an electrician. She travels daily between several work sites, carrying a small tool box. Suzette would not be allowed a deduction for the cost of transport between home and work on the basis that she is required to carry bulky equipment. However, she would qualify for a deduction on the basis that her employment is itinerant. The carriage of her equipment may affirm her status as an itinerant employee as it arises from the practical necessity for her tools of trade to be readily available for use at each work site.

The employer provides an allowance

67. Official recognition by an employer may indicate that travelling is a necessary element of the employment. However, receipt of an allowance does not, in itself, indicate that the employee's work is of an itinerant nature or that the travel is deductible. Employers may pay an allowance irrespective of whether the employee is required to travel in the course of their duties. Allowances are also sometimes paid to compensate the employee for having to travel to and from work at inconvenient times or when public transport is unavailable.

68. Therefore, the payment of an allowance is, by itself, insufficient to prove itinerancy, and must be considered together with the other characteristics of the employee's work The deductibility of an expense against an allowance is determined by subsection 51(1) of the Act together with the substantiation provisions (see Taxation Ruling IT 2543).

69. In *Wiener's* case the school teacher was paid an allowance for travelling. This was one of the factors that assisted the Court to infer that travelling was an essential part of her duties. In *Case U97*, B J McMahon (discussing *Wiener's* case) said (ATC at 587; ATR at 3494):

> 'It is to be noted that she was paid an allowance for travelling. From this (inter alia), the Court was prepared to infer that travelling was a necessary element of her employment.'

70. In *Case U97* the Tribunal was of the opinion that the taxpayer's employment lacked itinerant characteristics. Among those inherent elements, which the Tribunal reviewed in making their decision, the absence of official recognition by the employer, through the provision of a travel allowance was unfavourable to his claim. The Tribunal said (ATC at 588; ATR at 3495-3496):

> 'There is not the web of workplaces that one looks for as a structure for the applicant's working life if that life is to be regarded as itinerant. There is not the constant unsettled dispatch from one workplace to another, the element of uncertainty, the official recognition by the employer through allowances of the essential nature of the travel, or even the requirement to carry tools of trade, all of which have played some part in assisting one to recognise categories of itinerant workers when they arise.'

Allowances and reimbursements

Award transport (fares) allowances

71. Award transport (fares) allowances are allowances paid to employees under an award that recognises that employees may incur transport costs for travel undertaken in the course of performing the duties of employment. Award transport (fares) allowances do not cover the cost of accommodation, meals and incidentals incurred when travelling (see ***Travel expenses***, paragraphs 84 to 88).

72. The receipt of an allowance, whether paid under an award or not, does not mean that an employee is automatically entitled to claim a deduction. Regardless of the level of the claim, the tests of deductibility in subsection 51(1) of the Act must be met.

73. A deduction is allowable only to the extent to which the expenses are incurred by an employee in earning assessable income. A deduction is not allowable for amounts that have not been incurred, or for expenditure that is not incurred in earning assessable income.

74. In addition to the tests in subsection 51(1) of the Act, the rules of substantiation must be met in relation to claims made against award transport (fares) allowances.

75. Employees who claim deductions in excess of the amount of the award transport allowance payable as at 29 October 1986, must substantiate the whole of the claim, not just the excess. Deductions claimed that do not exceed the award rate as at 29 October 1986 are excluded from the substantiation requirements.

Allowable expenses

Transport expenses: travel between home and work

76. Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles, bicycles, etc. for work-related travel. They do not include the cost of accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 84 to 88).

77. A deduction is not allowable for the cost of transport by an employee between home and his or her normal work place as it is generally considered to be a private expense. The cost of travelling between home and work is generally incurred to put the employee in a position to perform duties of employment, rather than **in the performance** of those duties. This principle is not altered by the performance of incidental tasks en route (paragraph 34 of Taxation Ruling MT 2027) or use of a car because using public transport is impracticable.

78. The High Court considered transport expenses incurred between home and work in *Lunney v. FC of T* (1957-1958) 100 CLR 478; (1958) 11 ATD 404 (*Lunney's* case). In a joint judgment, Williams, Kitto and Taylor JJ (CLR at 498-499; ATD at 412-413) stated that:

> 'The question whether the fares which were paid by the appellants are deductible under section 51 should not and, indeed, cannot be solved simply by a process of reasoning which asserts that because expenditure on fares from a taxpayer's residence to his place of employment or place of business is necessary if assessable income is to be derived, such expenditure must be regarded as "incidental and relevant" to the derivation of such income...But to say that expenditure on fares is a prerequisite to the earning of a taxpayer's income is not to say that such expenditure is incurred in or in the course of gaining or producing his income.'

79. The fact that the transport is outside normal working hours or involves a second or subsequent trip does not change this principle. For more information see paragraph 6 of Taxation Ruling IT 2543, Taxation Ruling IT 112 and Taxation Determination TD 93/113.

80. **Example:** Graeme is a primary school teacher who travels daily to and from school. Occasionally he is required to attend parent-teacher meetings at the school outside normal working hours. The cost of this travel between his home and the school is not an allowable deduction.

81. An employee may be regularly employed at one site on some days and another on other days. In both cases, the normal work place is where the employee performs normal duties.

82. **Example:** Rani is a doctor who works at three medical clinics. Over a period of two weeks she works four days at one clinic and three days each at the other clinics. The travel between home and either of these locations is travel to and from her normal work place. It is private and no deduction is allowable.

83. A transport expense is generally allowable to an itinerant employee who is able to satisfy the guidelines outlined in this Ruling. Therefore travel from an employee's home may constitute work travel where the nature of the office or employment is inherently itinerant. Lord Wilberforce in *Taylor v Provan* [1975] AC 194 at 215, stated:

> 'To do any job, it is necessary to get there: but it is settled law that expenses of travelling to work cannot be deducted against the emoluments of the employment. It is only if the job requires a man to travel that his expenses of that travel can be deducted, i.e. if he is travelling on his work, as distinct from travelling to his work. The most obvious category of jobs of this kind is that

> of itinerant jobs, such as a commercial traveller...But for this doctrine to apply, he must be required by the nature of the job itself to do the work of the job in two places: the mere fact that he may choose to do part of it in a place separate from that where the job is objectively located is not enough.'

Travel expenses

84. A deduction is allowable for the costs incurred by an employee in undertaking work-related travel. An example is where an employee attends a seminar interstate. Travel expenses include the costs of accommodation, fares, meals and incidentals.

85. Receipt of an allowance does not automatically entitle an employee to a deduction for travel expenses. A work-related travel expense must be incurred and only the amount actually spent can be claimed as a deduction.

86. The general rule is that no deduction is allowed for work-related expenses unless written evidence, such as a receipt, is obtained. However, special substantiation rules apply to travel expenses if an employee receives a travel allowance.

87. If a travel allowance is received and the amount of the claim for expenses incurred is no more than a reasonable amount, substantiation is not required. The Commissioner of Taxation publishes annually a Taxation Ruling that sets out the amount of reasonable expenses covered by a travel allowance.

88. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

Examples

89. Gerry is a fruit picker who works on the same farms each year. He has been travelling in the farm circuit for several years and has a degree of permanency in the various farm locations. Valerie is also a fruit picker. She does not have a regular circuit, but organises her next job before completing the work at the current farm.

Gerry and Valerie are both itinerant employees because:

(a) they have a web of work places; and

(b) there is continual travel from one farm to another.

90. Hai is also a fruit picker by occupation who travels around with the view of finding work. When he finds work, he will stay in that

location until the work is completed, and then move on in search of other jobs in the industry.

Hai is not an itinerant employee and his travelling costs are not an allowable deduction because the expense is incurred at a point in time too soon to be regarded as being in the course of carrying out the duties of his employment (see *FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541).

91. Tom is a taxi driver. He travels to the depot at the beginning and end of each shift to collect and deliver his vehicle. Although travel is an inherent part of Tom's duties, the cost of transport between his home and the depot is not an allowable deduction. The home to work travel is private and falls within the general rule of *Lunney's* case (see paragraph 76-82 and Taxation Determination TD 94/17).

92. Cathy is a bank employee attached to a central branch. Apart from her regular duties she also performs relief work at nominated branches within a given area. Cathy is normally aware of the branches she must attend for relief duties well in advance, although she may occasionally be called at short notice. Cathy is not an itinerant employee because:

(a) travel is not a fundamental part of her employment;

(b) there is no continual travel from one work site to another. Upon commencement of her duties at a branch she is not required to travel;

(c) the uncertainty in her employment is minimal. She is generally aware in advance the branch she must attend; and

(d) she has several regular places of employment.

93. Brian is a bank employee who works at the same branch each day. In addition to his normal duties, Brian is rostered on stand-by duties to attend automatic telling machines (ATM's) within a given area when break-downs occur. If Brian is called to attend an ATM his employer pays an allowance from the time he leaves home until his return.

Brian has two distinct parts of his employment. The first requiring daily travel between his home and his usual branch, and the second requiring travel between his home and one of the ATM's within his area. A deduction is not allowable for the cost of transport between his home and his usual branch. It is a private expense and falls within the general rule of *Lunney's* case (see paragraph 76 to 82).

A deduction is allowable for the cost of transport between Brian's home and the ATM because this part of his employment is inherently itinerant for the following reasons:

(a) travel is a fundamental part of Brian's stand-by duties;

(b) the various ATM's within Brian's given area are a web of work places;

(c) Brian's stand-by duties have a degree of uncertainty; and

(d) an allowance is paid by his employer in recognition of the need to travel.

Your comments

94. If you wish to comment on this Draft Ruling, please send your comments by: 13 September 1995

to:

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Commissioner of Taxation

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- F C of T v. Maddalena 71 ATC 4161; (1971) 2 ATR 541
- FC of T v. Collings 76 ATC 4254; (1976) 6 ATR 476
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